In that case, the learned judge after quoting the presumption under section 144(b) said this:

"Here the presumption is that each passenger is presumed to make a separate payment. If this is so, then if any car was carrying five passengers and four gave evidence that they were not passengers in a taxi, had not paid or intended to pay any fare in such a way that they were accepted as witnesses of truth by the magistrate, there remained the status of the fifth passenger. The presumption still arises in respect of the fifth passenger and, if the fifth passenger is not called to give evidence to rebut the prosecution and to prove the contrary on a balance of probabilities, then the presumption means that he is a fare-paying passenger and the driver of the taxi must stand convicted on the pirate taxi charge, since he has carried one passenger for hire or reward."

With respect, I do not agree with this view. I am of the opinion that for an accused person to rebut any presumption cast on him he can do it in any way whatsoever. He may call all the passengers in the vehicle or he may call some of them and elect not to call the others. So long as he is successful in rebutting the presumption or raising a reasonable doubt, then he is entitled to acquittal.

If the law requires, as in this case, that each passenger must give evidence then it may result in an injustice. For instance —

(a) what will the position be if one of the passengers died, is not traceable, or is a mentally deranged person or a child incapable of speech?

(b) what will the position be if one of the passengers is called by the prosecution and his testimony that he pays fare to the accused is not acceptable to the court or if his credit is impeached?

(c) what will the position be if all the passengers were called by the accused and one of them gives evidence against the accused and such evidence is not acceptable to the court or if his credit is impeached?

The appellant was charged only with one charge concerning the four passengers and not four separate charges on every passenger. The proof required for a conviction is that the vehicle is used as a public service vehicle on that particular date and not whether any passenger is carried for hire and reward and therefore the appellant is at liberty to discharge this proof by any means at his disposal and if he succeeds to create a doubt in the prosecution case and this he may do by "disproving" a material fact on which the prosecution relies or by proving facts from which it may be inferred that a material fact on which the prosecution relies is not so probable that a prudent man ought to act upon to supposition that that fact exists (see *Saminathan* v. *Public Prosecutor*[2]). The meaning of the word "disprove" appears under section 3 of the Evidence Act which reads as follows:

"'disproved': a fact is said to be 'disproved' when, after considering the matters before it, the court either believes that it does not exist or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist."

In criminal matters when the burden of proving an issue is on the accused, i.e. when the law presumes some matter against the accused "unless the contrary is proved" it is not higher than on a party to a civil suit. To require every witness to testify as in this case, would mean to require the appellant to prove the case beyond any reasonable doubt and not merely a balance of probability. In this case I am of the opinion that the appellant has discharged the onus of proof cast on him.

I said earlier I made reservation as to the correctness of the learned Magistrate calling for the defence on the second charge. My mind is drawn to the case of *Public Prosecutor* v. *Ong Hock Thuan*[3] where Azmi J. (as he then was) held that there was no presumption against the accused in a charge under section 74(2) of the Ordinance. The presumption under section 144 relates only to offences under Part V. Section 74(2) is under Part IV. I do not think it is correct to conclude that since presumption in an offence under Part V has arisen then it extends its operation to another charge under Part IV. For this reason, I am of the opinion that the learned Magistrate should not have called for the defence in respect of the second charge on the ground that the prosecution has failed to prove in their case there was hire and reward. They were merely relying on the presumption which does not operate in the second charge.

I therefore allow the appeal. The conviction and sentence in both charges will be set aside. Any fine if paid should be refunded to the appellant and any disqualification endorsement on the appellant's driving licence should be expunged from record. The vehicle if forfeited should be returned to the appellant.

Appeal allowed.

Solicitors: *Foo Say Ghee & Co.*

PUBLIC PROSECUTOR v. ABDUL AZIZSOU & ORS.

[A.Cr.J. (Mohamed Zahir J.) January 30 and March 26, 1978]
[Kota Bharu — Criminal Appeal No. 43 of 1975]

Customs and Excise — Importing taxable goods on which sales tax had not been paid — Fraudulent evasion of customs duty — Accomplice — Prima facie evidence — Sales Tax Act, 1972, s. 43 — Customs Act, 1967, s. 135(1).

Evidence — Accomplice — Whether there was corroborating evidence.

The first respondent had been charged with the offence of importing taxable goods on which sales tax had not been paid, an offence under section 43 of the Sales Tax Act, 1972; and the first, second and third respondents were charged with being knowingly concerned in a fraudulent evasion of customs duty. The learned President of the Sessions Court acquitted the respondents as he held that one of the witnesses for the prosecution was an accomplice and there was no corroborating evidence. The Public Prosecutor appealed.

Held, allowing the appeal: although the learned President of the Sessions Court was correct in holding that the prosecution witness was an accomplice, he erred in holding that there was no corroboration. There was *prima facie* evidence against the respondents at the end of the prosecution case and they should be called on to enter on their defence.

Cases referred to:-

(1) *Rattan Singh* v. *Public Prosecutor* [1971] 1 M.L.J. 162.

(2) *Regina* v. *Mullins* 3 Cox C.C. 526.

(3) *Lian Teck Chiew* v. *Reg.* [1955] M.L.J. 28.

CRIMINAL APPEAL.

Shaari bin Haji Mohamed Noor (Deputy Public Prosecutor) for the appellant.

P. Dorairaj for the 1st and 2nd respondents.

A. Gomez for the 3rd respondent.

Mohamed Zahir J.: The Public Prosecutor appeals against the decision of the learned President of the Sessions Court in which he acquitted and discharged all the respondents of all the charges.

The 1st respondent was charged as follows: —

"That you at about 12.00 noon on 22nd June, 1974, at the Post Office, Kota Bharu, in the State of Kelantan, did import taxable goods, to wit: 733 yards of textiles, on which sales tax amounting to $48.84 has not been proved to have been paid, to wit: failing to comply with the requirements of section 12(b) of the Sales Tax Act No. 64 of 1972 and thereby committed an offence under section 43(a) and punishable under Section 43 of the said Sales Tax Act."

The 1st respondent, 2nd respondent and 3rd respondent were jointly charged as follows: —

"That you at about 12.00 noon on 22nd June, 1974, at the Post Office, Kota Bharu, in the State of Kelantan, were knowingly concerned in a fraudulent evasion of customs duties, to wit: $219.58 leviable by law on 5 parcels containing 733 yards of textiles imported through the post, and you thereby committed an offence under section 135(1)(g) of the Customs Act, No. 62 of 1967 and punishable under section 135(1) of the said Customs Act."

At the end of the case for the prosecution, the learned President held that PW3 was an accomplice and he was of the opinion that the case for the prosecution depended on the evidence of PW3 alone. He acquitted and discharged all the respondents without calling their defence. The learned President stated as regards the evidence of PW3: "Short of any corroboration his evidence is of little value". He found that there was no corroborating evidence.

There are four grounds of appeal which can be summarised under two grounds:

(a) that there was *prima facie* evidence at the close of the prosecution case and that the learned President ought to have called for the defence; and

(b) that PW3 was not an accomplice and or that if he was an accomplice there was corroboration.

Let me dispose of ground (b) first.

The learned Deputy Public Prosecutor argued that PW3 was not an accomplice and he referred to *Rattan Singh* v. *Public Prosecutor,*[1] which is a corruption case in which the learned judge quoted *Regina* v. *Mullins,*[2] where Maule J. said at page 530 as follows:

"Barrett and Baldwinson, on the other hand, were really Chartists, concurring fully in the criminal designs of the rest for a certain time, until getting alarmed, or from some other cause, they turned upon their former associates, and gave information against them. These persons may be truly called accomplices."

The learned Deputy Public Prosecutor also quoted *Lian Teck Chew* v. *Regina*[3] where one Mr. Waters, an acting Deputy Superintendent of the Harbour Board Police, on three occasions carried chandu from the Harbour Board area and on each occasion was subsequently given a sum of money.

The learned Deputy Public Prosecutor argued that an accomplice is one who participated in the offence and he submitted that PW3 did not participate in the offence unlike Barrett and Baldwinson in *R.* v. *Mullins* and that he was more like Mr. Waters in *Lian Teck Chew.*

With respect, I do not agree with him. I agree with the learned President that PW3 is an accomplice. It was he who wrote down the number of five parcels on which duty had not been paid and which was the subject matter of the charge. It was he who tampered with exhibit CD6 (P4) enabling the crime to be perpetrated. PW3 could be charged jointly with the three respondents. In the same case *Regina* v. *Mullins* (above) Maule J. stated:

"An accomplice is a person who has concurred in the commission of an offence."

In *Lian Teck Chew* case it was only the allegation of the appellant, the accused in that case, that Mr. Waters carried the chandu. It was a mere allegation and the court obviously did not believe the accused. But if Mr. Waters did in fact carry the opium as alleged and it was so proved, then I am of the opinion that he was also an accomplice.

Now the question is whether the learned President's finding is right in that there is no corroboration of PW3's evidence.

The learned Deputy Public Prosecutor submitted to me that it was established from the evidence that when Form CD78 dated June 16, 1974 was prepared and sent to the consignee and in this case it was 1st respondent, he did come to the Post Office to collect his parcels. CD78 is a Customs form calling the consignee to come to the Post Office and to bring along the invoice and other documents in order to enable the Customs to ascertain the value of the articles and to assess the duty due. It was also established that 1st respondent did come to the Post Office on June 22, 1974 and he must have by then received CD78. He must have then seen 2nd respondent who, as established, prepared CD6 which was a Customs form indicating how much the duty was due. This form CD6 was then handed to some one in the Postal Section to hand over the parcels to 1st respondent and to collect the duty due on CD6 from 1st respondent.

It was a fact that 1st respondent acknowledged receipt of the 11 parcels including the five offending ones by stamping his chop at the back of original CD6. Therefore, I must come to the conclusion that he must have come to receive the parcels on that day (June 22, 1974). The fact that he was at the Post Office on that day was confirmed by PW7 the trishaw pedlar who carried the 11 parcels back to 1st respondent's shop at his instruction.

According to PW7, when he first saw the 11 bundles, they were on the steps of the Post Office outside the counter. They all had "Medina Textile" written on them. On this point, the learned President in his grounds stated that there was no evidence that 1st respondent checked the parcels or counted them before being handed over to him. It has to be admitted that there was the handing of the parcels by some one at the Post Office to 1st respondent. But the question is shouldn't he realize that there were 11 bundles instead of 6? I looked at the bundles on the date of the hearing of the appeal and I can come to no other conclusion but that no one could

have been mistaken them to be only six if they were placed in one heap. They were quite bulky as to escape notice, unlike for instance articles in a box. Further, 1st respondent signed the acknowledgment on the back of the original of CD6 which had the numbers of the offending parcels on the reverse side. Although number 6 was written of parcels on the page of the triplicate copy of CD6, yet (11) was clearly written on the original. It is most unlikely for a businessman like 1st respondent to fail to check the number of the parcels and/or to check how many parcels there were. He must have checked the number of the parcels from the invoice in his possession. Further, the parcels must have been taken from the inside of the Post Office and carried one after another and placed on the steps and I am of the opinion from this fact alone, considering the size of each parcel, it was an irresistible conclusion that he knew that there were 11 parcels.

The learned President in his grounds also stated when these parcels were detained by the authorities, he was not given the chance to explain. I think there was sufficient evidence that he was asked to explain. PW4, the Senior Superintendent of Customs in his evidence stated as follows:

"I questioned about the 11 parcels. Accused 1 told me that he had paid duty on 6 parcels bearing numbers Singapore 7423 — Singapore 7428. Accused 1 also told me that *the five* other parcels were ordered by him from Singapore and that he had not received the relevant document, i.e. the invoice from the supplier." (the emphasis is mine).

When PW4 interrogated the 1st respondent, the 11 parcels were stacked together in the front portion of the 1st respondent's shop. The 1st respondent also produced the invoice relating to the offending parcels (P20) which bore the number of the parcels, 9334-9338. Obviously he was asked to explain about the offending articles although not in such clarity as one expected it to be, but sufficient in my opinion to implicate the 1st respondent.

It is obvious to me that there was a system evolved by the perpetrators of the crime in this case in order to get the offending articles out of the Post Office and delivered to the consignee without payment of duty. CD6 was tampered with or otherwise forged and this was done consciously. There was no question of mistake for no one would want to stick out his neck for the consignee without there being something to it. The system as it appears to me in this case is this. The parcels proposed to be handed out without payment of customs duty did not bear any record in the Customs Department. But there were records in the Post Office. The Customs merely verify the goods on the Parcel Bill (P1) which was a Post Office Form. There was no evidence that the Customs kept a copy of the Parcel Bill. The Customs detained the dutiable goods for the purpose of preparing a Customs Form, CD78 (P2) which was handed to the Postal Clerk together with the dutiable goods and who would despatch the form to the consignee. The form required the consignee to produce any of the following documents as circumstances require: (a) Customs Import Account on Form Customs 1, (b) Invoice, (c) Permission to import and (d) Exemption declaration.

The consignee then handed CD78 to any of the Customs Officers on duty producing the required documents. In this case 1st respondent was asked to produce documents (a) and (b), and he produced them to 2nd respondent. Then the Customs Officer, in this case 2nd respondent, prepared CD6 and it was his duty to assess the duties due on the parcels mentioned in CD78 after perusing the documents produced by the consignee. He would also write on CD6 the number of parcels and parcel fee which was 40 cents per parcel. He would then register declaration (Customs Form 1) in a book called Buku Daftar Pejabat Pos (P13). He thereafter sent in to the Penguasa Kastom (in this case PW2) for scrutiny and signature. Then the original of CD6 would be handed to the Postal Clerk in the warehouse, the duplicate detained with the Customs and the triplicate be given to the consignee.

Thus, it would be noted that if Form CD78 was not prepared by the Customs there would be no Customs record of the parcels received at the Post Office. In this case there was no Form CD78 in respect of the 5 offending articles.

Therefore, in this set-up to defraud the Customs duty, care was taken from the beginning that no Form CD78 be prepared in respect of the offending articles.

But the record of the offending articles inevitably appeared in the Post Office record. The number of parcels and bags would appear in the Parcel Bill (P16). This Bill was despatched from the Post Office from where the parcels were despatched (in this case Singapore). This Bill did not indicate the numeral number written on each parcel but indicated how many parcels were despatched and in this case there were 70. The parcels were then entered into a book (Post Office R & P 27) called Record of Parcels (P3) and also in Post Office Form R & P 29C, Penyata Bagi Bungkusan (P5). In P5 there was a record of how many parcels received from all despatching Post Offices. On June 20, 1974 as disclosed in P15 and P16 there were 70 parcels from Singapore and from Penang 8. In Record of Parcels (P3) the particulars of the parcels were recorded. The numeral number of the parcels and the particulars of payment of Customs duties were recorded. From the invoice P12, the 6 non-offending parcels were despatched from Singapore on June 14 and received at Kota Bharu Post Office on June 16, and the number of the parcels 7423-7428 were recorded in P3. The invoice of the offending articles (P20) was dated June 18 and the parcels were expected to reach the Post Office on or about June 20. The fact that the five parcels were received by the Post Office was undeniable now. But when? The bottom page of P3 indicating the parcels received on June 20 was torn. P3 was a book having thick sheets of paper. From the way it was torn, I am of the opinion it was done carefully as not to destroy other pages. It could not be said to have been accidentally torn. Other pages were in order. But if we peruse the number of the articles written on it, we would see the articles despatched from Singapore on June 20 were as follows:

20/6/74 — Singapore 9331-9333(3)
Haji Abdul Hamid

20/6/74 — Singapore 9326-9330(5)
M.M. Kassim Co.
20/6/74 — Singapore 9339-9344(6)
A. Ismail Sultan K.B.

The 5 offending parcels were numbered 9334-9338.

I cannot but come into conclusion, bearing in mind that this was a plot, that the numbers of the offending parcels must have appeared at the last line of this page, otherwise the bottom bit of the page would not be surreptitiously torn. It must have been torn by someone in the plot. But the person or persons involved overlooked P6, Post Office Form Penyata Bayaran Kastam. There the number of the offending parcels 9334-9338 appeared clearly underneath the number of the non-offending articles 7423-7428.

It would appear, therefore, in not issuing CD78 by the Customs Officers, the plot to defraud duty was hatched earlier than the date of receipt of the offending parcels by the Post Office. To set the scheme in motion there must be a timing in that the consignee must be receiving two consignments from elsewhere where duty has to be paid. The consignee must collect the parcels at the same time. He would be made to pay duty in respect of one consignment only and not the other. Thus in collecting both consignments together he would appear to have paid duty on both consignments. The Postal Clerk would release the offending articles on CD6. The number of offending parcels would be added underneath the number of the non-offending parcels on the original of CD6 only. Thus, the Postal section would be having the tampered original of CD6 showing that the duty had been assessed by the Customs and this fact would be entered into the Post Office record accordingly and at the same time there was no record of the offending articles in the Customs section and therefore everything would be found to be in order. But to effect this plan, officers in both departments must work together hand in glove. We do not know how many were involved, but we have only 2nd and 3rd respondents, a Customs Officer and a Postal Clerk before us. Whether PW3, another Customs Officer, should not or should be in the dock, this is not for the court to say.

If we believe in the existence of the plot based on the foregoing facts, then we must come to the inevitable conclusion that 1st respondent is a party to it. No one would want to enrich him without some consideration on his part. Further, as I stated earlier, when receiving the eleven parcels he must have known of the existence of the five offending articles. They were bulky as not to escape notice and he must have checked after receipt of them. Section 135(2) of the Customs Act operated against him. He should be called to enter into his defence.

Now we come to 2nd respondent. It must be borne in mind that the Parcel Clerk would only release the parcels after receipt of the original of CD6 and which he had to enter into Penyata Bayaran Kastam (P6). It was 2nd respondent who prepared CD6. He must have done so only when approached by 1st respondent and upon 1st respondent delivering to him CD78, the invoice (P12) and Pengakuan Barang2 Bercukai (P12B1). It must have been so, otherwise 2nd respondent would not have prepared CD6. We must then bear in mind that 1st respondent at this point of time knew of the plot to defraud or in other words intention to defraud the duty. It was only to be concluded that 1st respondent must have approached some one in the ring in cahoot with him. It could not have been any other way. Because if 2nd respondent was not in collusion with the 1st respondent then 2nd respondent would prepare Form CD78 or would make enquiry why this Form CD78 was not issued earlier on the offending parcels upon receipt by the Post Office on June 20. But what if the 2nd respondent was then innocent and PW1 did not inform him of the offending parcels? Then there would be a risk of the plan being frustrated and the danger of the plot being unveiled. 2nd respondent, being as deposed by PW2, the Pegawai Kastam-in-Charge, might have subsequently noticed CD6 which was prepared by him earlier being tampered with without his permission or knowledge. He might have noticed more parcels being handed out to the consignee than what he had written in CD6. There was evidence by PW1, the Acting Post Master, that the Customs/Postal Clerk shared the same room and that the Customs Officers and the Postal Clerk sat at the counter and the warehouse was only 10 feet away from the counter. Thus there was risk of the plot being discovered if CD6 was prepared by an innocent party. But however small or great the risk was, it would be an unavoidable conclusion by anyone that 1st respondent would have approached a member of the ring, and that was 2nd respondent, otherwise the whole plan would be blown to the wind.

The acts of each and every respondent could not be considered in isolation but should be viewed as a chain in the plot. The fact that some one else was made to alter CD6, appears to me as part of the scheme for if 2nd respondent by any chance was charged in court subsequently he would disclaim knowledge of the tampering, as he is doing in this case.

Further, there was the evidence of PW7, the trishaw pedlar, who stated that after he was asked by 1st respondent to take the parcels to the shop, the parcels were on the steps outside the counter and the counter and the steps were about 10 feet away. He said 2nd respondent and 3rd respondent were at the counter. As I stated earlier no one who could count up to eleven would have missed at a glance the parcels being 11 in number rather than 6, the parcels being bulky. Thus 2nd respondent would not have failed to see there were more than 6 parcels, and that would be more than what he wrote down on CD6 earlier.

Therefore, I could not but come to the conclusion that 2nd respondent was involved and on this point alone, he should be called upon to enter upon his defence. But there was the evidence of PW3 which was now being afforded corroboration.

Now, we shall consider the position of 3rd respondent. According to PW1, the acting Post Master, he was the Postal Clerk on June 22. He was also on duty on June 20 when the five offending parcels arrived. According to PW1 among his duties were:

(a) to open up the bags in which the parcels were sent in the presence of the Customs;

(b) to record the particulars of parcels in the Record of Parcels, P3 (this was the register having the bottom part of the leaf in which entries of parcels received on June 20 was torn off) upon receipt of CD78 from the Customs;

(c) to keep the parcels in the warehouse, the key of which would be kept by the Postal Clerk;

(d) to release the parcels on production by the Customs the original copy of CD6 and the consignee the triplicate copy of CD6 and to collect the amount of duty due as stated in CD6;

(e) to record the particulars of duty collected on P6 after delivery of the parcels and collection of duty.

Since I have concluded that there was a plot, there was no way for any other person to get involved to the exclusion of the Parcel Clerk as he would be doing the recording and having the custody of the parcels. PW1 testified further on this:

"I agree that parcel kept in the warehouse could not leave without the knowledge of the postal clerk."

The Postal Clerk opened the mail bags before the Customs Officer who was in collusion with him and the Customs Officer would omit to issue CD78.

Counsel for 3rd respondent argued that some one else other than 3rd respondent might have handed over the offending parcels to the 1st respondent. He quoted the evidence of PW3 that a different postal clerk removed these parcels with the assistance of a postman to the despatch section. He said this postman was not called and he asked who handed the parcels? It would appear the evidence of PW3 on this point was not in reference to the transaction on that particular day, June 22. But he testified that 3rd respondent was at his counter. If 3rd respondent chose to rely on the evidence of PW3 on this point, he should also rely on the other part from PW3's evidence in which PW3 stated that 3rd respondent asked him to tamper with CD6. There was this other evidence to say that it was 3rd respondent who handed the 11 parcels to 1st respondent. The counsel for the 3rd respondent in cross-examination in the court below put the question to PW3 as follows:

"Put: On that morning June 22, 1974 accused 3 complained bitterly about the non-inclusion of parcel No. 9334-38 on Id 4A which was the only document he had. This complaint was made to you as you prepared CD6.

Ans: I disagree."

There were two other subsequent questions put to PW3 appearing on page 51 of the record of appeal which I need not quote here. Sufficient from these questions we could come to the conclusion that it was 3rd respondent who handed over the parcels to 1st respondent.

3rd respondent in handing over the parcels must have realised that there was something wrong. The triplicate copy of CD6 which must be produced by 1st respondent to him did not have the 5 offending parcels written on it. He must therefore suspect that there was something wrong. The alterations on the original of CD6 bore no initials and originally only in respect of 6 articles. The copy produced by 1st respondent was in respect of 6 articles only, why then did he deliver 5 other parcels to 1st respondent without further checking? This evidence alone would justify the calling of his defence. But as in the case of 2nd respondent, this evidence also affords corroboration to the evidence of PW3.

I also considered the discrepancies in the evidence of PW3 particularly on the point that he was asked to make the alteration on CD6. I think they were minor discrepancies which could be expected in the circumstances.

My order would, therefore, be: I allow the appeal. All the three respondents be called to enter into their defence on the charges preferred against them.

Appeal allowed.

Solicitors: *P. Dorairaj; Mohamed Yaacob & Gomez.*

PUBLIC PROSECUTOR v. GOH CHOOI GUAN

[R.Cr.J. (Syed Agil Barakbah J.) April 4, 1978]
[Alor Star — Kedah Criminal Revision No. 5 of 1978]

Criminal Law and Procedure — Revision — Jurisdiction — Part-heard case — Jurisdiction of President of Sessions Court transferred to post of Senior Federal Counsel, Customs & Excise Department — Whether he could resume hearing of part-heard case — Accused in custody for 2½ years — Criminal Procedure Code (F.M.S. Cap. 6), ss. 9 & 261 — Courts of Judicature Act 1964, s. 35 — Subordinate Courts Act (Act 92), ss. 59(2) & 76(2) — Firearms (Increased Penalties) Act, 1971, s. 8 — Arms Act, 1960, s. 9(a).

Criminal Law and Procedure — President, Sessions Court — Transfer as Senior Federal Counsel — Whether could resume hearing part-heard case — Criminal Procedure Code (F.M.S. Cap. 6), ss. 9 & 261.

Criminal Law and Procedure — "Ceases to exercise jurisdiction therein" — Interpretation of — Criminal Procedure Code (F.M.S. Cap. 6), s. 261.

The Senior Federal Counsel attached to the Royal Customs & Excise Department, Kuala Lumpur, applied to the court to exercise its revisionary jurisdiction under section 35 of the Courts of Judicature Act, 1964 to decide whether upon the transfer of the President, Sessions Court to the Royal Customs & Excise Department as Senior Federal Counsel, he had ceased to exercise any jurisdiction in the trial part-heard by him. The accused in that case was jointly charged with 6 others (who had been acquitted) for being in unlawful possession of a pistol under section 8 of the Firearms (Increased Penalties) Act, and for being in possession of 40 rounds of ammunition without a licence under section 9 of the Arms Act. He had, since May 18, 1976, been in custody.

Held: (1) in the case of a transfer to the post of Senior Federal Counsel or Deputy Public Prosecutor, the President or Magistrate did not cease to have jurisdiction, being still gazetted as such. He only ceased to officiate as a President or Magistrate;

(2) it was undesirable for a Deputy Public Prosecutor, whose duties were opposed to those of a President or a Magistrate and who had direct access to investigation papers of criminal cases, to sit on the Bench and continue the trial part-heard by him;

(3) the position of Senior Federal Counsel as in the present case was different from that of the Deputy Public Prosecutor. There should therefore be no likelihood of offending the principles if he were to continue the part-heard